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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,035	02/21/2002	Myron E. McLane	MUSTAD/I02/US	6771
2543	7590	11/12/2003	EXAMINER	
ALIX YALE & RISTAS LLP 750 MAIN STREET SUITE 1400 HARTFORD, CT 06103			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 11/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/080,035

Applicant(s)

MCLANE, MYRON E.

Examiner

Son T. Nguyen

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3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

1. **Claims 9-14** are objected to because of the following informalities: claims 9-14 are all designated as dependents of claim 11; however, claim 11 is dependent of itself. For purpose of examination, the examiner is considering dependency of claims 9-14 to claim 8. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-14** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 (line 7) & 8 (line 9), the phrase "the wedge pad" lacks prior antecedent basis, for such wedge pad was not claimed prior.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-3,7-10,12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Slack (US 2191834) in view of Sherman (US 3513915).

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For claim 1, Slack discloses a support pad for an equine foot, said support pad comprising: a bi-laterally symmetrical oval pad 1 having a toe end, a heel end opposite the toe end, a substantially planar hoof surface, a substantially planar opposite shoe surface 2; and a generally triangular frog support 3 formed as one piece with the pad and having a generally planar frog support face, an opposite ground contact face 4,5, a rounded tip of the frog support projecting toward said toe end from the heel end of the pad such that said tip is positioned in said central area of the pad and centered on a line drawn from said toe end to said heel end to separate said support pad into equal lateral portions. However, Slack is silent regarding a central opening through said hoof and shoe surfaces and said tip is surrounded by said central opening toward said toe end and laterally relative to said line. Sherman teaches a support pad 11 for a horse in which the pad includes a central opening 14 through which air can pass to ventilate the frog 16 in the horse's hoof (col. 2, lines 43-45). It would have been obvious to one ~~having ordinary skill in the art at the time the invention was made to include a central~~ opening as taught by Sherman in the support pad of Slack in order to allow ventilate the frog 16 in the horse's hoof. Since Sherman's central opening is located in the central area of the pad, the same must exist when combined with Slack; therefore, Slack as modified by Sherman teaches the tip being surrounded by said central opening toward said toe end and laterally relative to said line. Note, this interpretation in no way modified the Slack reference because the tip of Slack's frog support 3 is already at the central area of the pad.

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For claims 2 & 12, Slack as modified by Sherman (emphasis on Slack) further discloses the oval pad is a wedge pad tapering from a first thickness at the heel end (at ref. 3) to a second thickness at the toe end (at ref. 1), said second thickness being less than said first thickness such that said hoof surface and shoe surface have an angular orientation relative to each other.

For claim 3, Slack as modified by Sherman (emphasis on Slack) further discloses the frog support face extends from said tip to the heel end of said support pad and said frog ground contact face extends from said tip toward said heel end. However, Slack as modified by Sherman is silent regarding the ground contact face terminating at least one inch from said heel end such that said shoe surface is continuous around the entire periphery of said support pad. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the ground contact face terminating at least one inch from said heel end such that said shoe surface is continuous around the entire periphery of said support pad of Slack as modified by Sherman, depending on the horse's frog location, thus it may not be needed to extend the frog support all the way back to the heel end, which can save on material, labor and cost.

For claim 7, Slack as modified by Sherman is silent regarding the ground contact face at said tip is approximately five sixteenths of an inch below laterally adjacent portions of said shoe surface. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the ground contact face at said tip is approximately five sixteenths of an inch below laterally adjacent portions of said shoe surface of Slack as modified by Sherman, since it has been held that where routine

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testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 8, in addition to the above, Slack as modified by Sherman (emphasis on Slack) further discloses a horseshoe 7 mountable to said shoe surface, said horseshoe having a traction face and a mounting face (see figs.5 & 6), wherein said tip is surrounded by said central opening toward said toe end and laterally relative to said line.

For claim 9, Slack as modified by Sherman (emphasis on Slack) further discloses wherein said horseshoe has a configuration selected from the group consisting of egg bar, straight bar, or open shoe.

For claim 10, Slack as modified by Sherman (emphasis on Slack) further discloses wherein said ground contact surface projects to the ground surface of said traction surface when said horseshoe is mounted to said shoe surface (see fig. 6).

6. **Claims 4-6,11,13,14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Slack as modified by Sherman as applied to claims 1 & 8 above, and further in view of Murphy (US 4513825).

For claims 4 & 13, Murphy teaches a support pad 11 in which a frog support face 20 diverges from a hoof surface such that the frog support surface at a tip 21 is elevated relative to laterally adjacent portions of the hoof surface (see x-section fig. 2 and col. 3, lines 43-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the frog support face diverges from the hoof surface such that the frog support surface at the tip is elevated relative to laterally

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adjacent portions of the hoof surface as taught by Murphy in the support pad of Slack as modified by Sherman in order to protect the frog and to stimulate and increase circulation (col. 1, lines 65-68 and col. 3, lines 50-52 of Murphy).

For claims 5 & 14, Slack as modified by Sherman and Murphy is silent regarding the frog support surface at said tip is elevated relative to laterally adjacent portions of said hoof surface by a distance of approximately 0.25 inches. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the frog support surface at said tip is elevated relative to laterally adjacent portions of said hoof surface by a distance of approximately 0.25 inches in the support pad of Slack as modified by Sherman and Murphy, depending on the horse being supported by the pad because each horse may require different support level.

For claims 6 & 11, Slack as modified by Sherman and Murphy discloses the ground contact face has an angular orientation relative to said frog support face such that said frog support is thickest at said tip and tapers toward the heel end of said support pad. See above for explanation.

7. The following prior arts are made of record to provide the best available relevant examples of a support pad for a horse having a frog support pad: 5439062, 643246, 460459, 4794991, 828495, 912813, 268605, 5002133, 6401828.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
November 6, 2003